

**Robert C. Weaver, Jr. OSB #80135**

E-Mail: rweaver@gsblaw.com

**Laura Caldera Taylor, OSB #99378**

E-Mail: ltaylor@gsblaw.com

**Garvey Schubert Barer**

Eleventh Floor

121 S.W. Morrison Street

Portland, Oregon 97204-3141

Telephone: (503) 228-3939

Fax: (503) 226-0259

Attorneys for Defendants Biomet, Inc. and  
Arthrotek, Inc.

**Brenna K. Legaard, OSB No. 00165**

brenna@chernofflaw.com

**Susan D. Pitchford, OSB No. 98091**

sdp@chernofflaw.com

**CHERNOFF, VILHAUER, McCLUNG &  
STENZEL, LLP**

1600 ODS Tower

601 S.W. Second Avenue

Portland, Oregon 97204-3157

Telephone: (503) 227-5631

Facsimile: (503) 228-4373

Attorneys for Plaintiffs Smith & Nephew, Inc. and Dr.  
John O. Hayhurst

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

**SMITH & NEPHEW, INC. and JOHN O.  
HAYHURST, M.D.,**

Plaintiffs,

v.

**BIOMET, INC. and ARTHROTEK, INC.,**

Defendants.

Case No. CV05-611-KI

**STIPULATED CONSENT JUDGMENT**

**PATENT CASE**

Pursuant to Fed. R. Civ. P. 41(a)(1)(ii), and (c) the Parties hereto, by their respective undersigned counsel of record, hereby stipulate and agree that, subject to the approval of this Court, that this Stipulated Consent Judgment shall be entered, and this civil action shall be hereby dismissed as follows:

1. This Court's Opinion and Order of November 21, 2005 granting a Preliminary Injunction shall remain in force and effect permanently, and this Court shall retain jurisdiction over enforcement of such Preliminary Injunction and certain ones of the terms of settlement amongst the parties;
2. All remaining claims of plaintiffs' Smith & Nephew, Inc. ("Smith & Nephew") and John O. Hayhurst, M.D. ("Hayhurst") are hereby dismissed without prejudice;
3. The defenses raised by defendants Biomet, Inc. ("Biomet") and Arthrotek, Inc. ("Arthrotek") in this civil action with respect to the infringement allegations that were asserted against their SureFire product are hereby dismissed with prejudice;
4. Smith & Nephew, Hayhurst, Biomet and Arthrotek, and each of them, shall retain the right and ability to assert, and/or otherwise litigate, any and all claims and/or defenses (including counterclaims) relative to the issues of infringement, claim construction, enforceability and/or validity of U.S. Patent No. 5,417,691 ("the '691 patent"), and any other claims and defenses, together with the right to appeal same, whether asserted in this civil action or not; relative to any product of Biomet and/or Arthrotek that is neither the same as, nor essentially the same as, the SureFire product as it existed as of November 21, 2005. As used herein, the term "essentially the same as the SureFire product" means that any changes from the SureFire product are merely colorable and unrelated to the limitations in the claims of the '691

patent, as the phrase "essentially the same as" was used in the case of *Hallco Mfg. Co., Inc. v. Foster*, 256 F.3d 1290 (Fed. Cir. 2001);

5. Each Party shall bear its own costs and attorneys' fees.

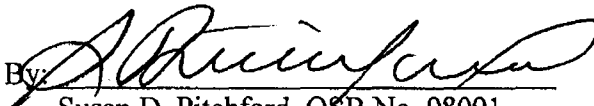
**IT IS SO ORDERED:**

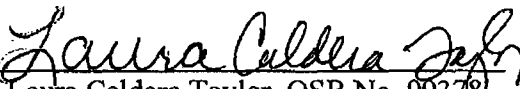
Entered this 20<sup>th</sup> day of March, 2007.

  
\_\_\_\_\_  
Honorable Garr M. King  
United States District Judge

Approved on Behalf of Plaintiffs  
JOHN O. HAYHURST, M.D.  
and SMITH & NEPHEW, INC.

Approved on Behalf of Defendants  
BIOMET, INC. and ARTHROTEK, INC.

By:   
\_\_\_\_\_  
Susan D. Pitchford, OSB No. 98091  
Of Attorneys for Plaintiffs

By:   
\_\_\_\_\_  
Laura Caldera Taylor, OSB No. 99378  
Of Attorneys for Defendants

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